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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,656	01/15/2004	Marjorie Mossman Peffly	9144	5879

27752 7590 11/16/2005

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CINCINNATI, OH 45224

EXAMINER

BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/758,656

Applicant(s)

PEFFLY ET AL.

Examiner

Charles I. Boyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-19 and 21-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/14/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This action is responsive to applicants' amendment and response received September 1, 2005. Claims 1-6, 8-19, and 21-27 are currently pending.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States;

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-6, 8-19, and 21-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Geary et al, WO 03/105793.

Geary et al teach a hair shampoo comprising 15% lauryl ether sulfate (containing 3 ethoxy groups, which result in an ethoxylate level of about 2 and a sulfate level of about 2, both of which values are well within the ranges presently claimed), 5% sodium lauryl sulfate, 0.25% polyquaternium-10 having a molecular weight of 2,000,000, 0.4% sodium citrate, 0.5% silicone nanoemulsion having a particle size of 37 nm, and the balance water (page 37, example 11). Another example comprises 12% lauryl ether sulfate, 2% sodium lauryl sulfate, 0.5% polyquaternium-10 having a molecular weight of

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2,000,000, 2% betaine, and the balance water (page 36, example 5). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

3. Claims 1-6, and 8-13 are rejected under 35 U.S.C. 102(a) as being anticipated by Royce et al, US 2002/0012646.

Royce et al teach a hair shampoo comprising 12.5% lauryl ether sulfate (containing 3 ethoxy groups, which result in an ethoxylate level of about 2 and a sulfate level of about 2, both of which values are well within the ranges presently claimed), 1.5% ammonium lauryl sulfate, 2.7% betaine, 0.15% polyquaternium-10 having a molecular weight of 900,000, 0.4% sodium citrate, 1% silicone nanoemulsion having a particle size of 300 nm, and the balance water (page 14, example 2). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

4. Claims 1-6, 8-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaiser et al, US 5,919,440.

Kaiser et al teach a hair shampoo comprising 9.5% lauryl ether sulfate (containing 3 ethoxy groups, which result in an ethoxylate level of about 2 and a sulfate level of about 2, both of which values are well within the ranges presently claimed), 1% ammonium lauryl sulfate, 0.25% polyquaternium-10 having a molecular weight of 900,000, 0.3% phosphate salts, and the balance water (col. 15, example XIV). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

5. Claims 1-6, 8-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Heinz et al, US 5,409,628.

Heinz et al teach a hair shampoo comprising 8.25% lauryl ether sulfate (which results in an ethoxylate level of about 2 and a sulfate level of about 2, both of which values are well within the ranges presently claimed), 0.5% polyquaternium-10, 1.5% sodium chloride, 1.5% betaine, and the balance water (col. 5, example 4). Another example comprises 20% alkyl ether sulfates with 1-4 ethoxy groups, 10% alkyl olefin sulfonate, and 0.25% polyquaternium-10 (col. 4, example 1). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that Heinz does not teach the molecular weight of polyquaternium-10, and so they have assumed that the polyquaternium-10 of the reference is LR400, a common polyquaternium-10, which has a molecular weight of about 400,000. It is the examiner's experience, however, as evidenced by the references above, that a much more common polyquaternium-10 used in shampoo compositions is JR30M, which has a molecular weight of 900,000. With respect to applicants' calculation of ethoxylate and sulfate levels, the examiner finds that when the values of example 1 are calculated, they fall within the presently claimed range. Accordingly, the rejection is maintained.

6. Claims 1-6, 8-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel et al, US 5,726,137.

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Patel et al teach a hair conditioning shampoo comprising 4.5% decyl ether sulfate (which results in an ethoxylate level of about 2 and a sulfate level of about 1.5, both of which values are well within the ranges presently claimed), 0.6% polyquaternium-10 having a molecular weight of 900,000, 0.2% sodium phosphate, 9% betaine, 4% dimethicone/polydimethylsiloxane, and the balance water (col. 15, example 5-4). Another example comprises 12.5% of a mixture of alkyl ether sulfates with 2 and 3 ethoxy groups respectively, 2.75% laureth carboxylate anionic surfactant, and 0.275% polyquaternium-10 having a molecular weight of 900,000 (col. 13, example 3). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that Patel does not teach or suggest an anionic surfactant system having a ratio of ethoxylated to nonethoxylated surfactant greater than 2:1 and an ethoxylate surfactant containing at least 2 moles of ethoxylation. The examiner disagrees and notes that the surfactant proportions of example 3 satisfy this limitation. Accordingly, the rejection is maintained.

7. The rejection of claims 1-6, 8-19, and 21-28 under 35 U.S.C. 102(e) as being anticipated by Wire et al, US 6,524,563 is withdrawn in view of applicants' amendment and response.

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8. The rejection of claims 1-11 and 13 under 35 U.S.C. 102(b) as being anticipated by Marschner et al, US 5,045,307 is withdrawn in view of applicants' amendment and response.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-F 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571 272 1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Charles I Boyer  
Primary Examiner  
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